FILED
MAR 12 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(3)

No. 06-900

IN THE

Supreme Court of the United States

FIRST NATIONAL BANK OF AMES, IOWA,

Petitioner,

v.

INNOVATIVE CLINICAL AND CONSULTING SERVICES, LLC
d/b/a TOCO HILLS URGENT CARE,

Respondent.

On Petition for Writ of Certiorari To The
Georgia Court of Appeals

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Petitioner First National Bank of Ames, Iowa ("First National") hereby replies to the brief of Respondent Innovative Clinical and Consulting Services, LLC ("ICCS") in opposition to the petition for writ of certiorari.

ARGUMENT

The Brief in Opposition filed by ICCS represents a renewed effort to argue theories of the case that have long since been rejected by the courts below. ICCS urges a convoluted view of the facts in its brief that is laced with theories of imaginary conspiracies that are illogical, unsupported by the record, and directly at odds with the very contracts that ICCS signed and the very pleadings it filed in this action. There is no reason for this Court to be distracted by them.

The governing record in this case remains extremely clear. The only contacts that First National had with the State of Georgia in connection with the bank accounts at issue were that 1) bank statements and correspondence concerning the accounts were mailed to ICCS and 2) First National responded to an occasional phone call from ICCS regarding the accounts. [Pet. App. at 4a, 5a, 12a, and 16a]. The Georgia courts properly focused only on these contacts and ignored ICCS' unsupported conspiracy theories. [Id.]. Therefore, none of the claims asserted by ICCS relating to the Iowa bank accounts arise out of or relate to any of the contacts that First National had with the State of Georgia.

I. THERE ARE NO CONTACTS BETWEEN FIRST NATIONAL AND GEORGIA OTHER THAN CORRESPONDENCE AND TELEPHONE CALLS.

ICCS essentially raises three additional arguments that it contends demonstrate greater contacts between First National

and the State of Georgia than the Georgia courts have previously found to exist.

First, ICCS argues that First National acted through an agency relationship with its bank customer, A.C. Financial, in the State of Georgia. Nothing in the record or the law supports this argument. The Georgia courts properly rejected this theory below.[1]

Second, ICCS argues that the accounts established by A.C. Financial were somehow surreptitiously or secretly established by First National to deceive ICCS. This inventive argument is directly at odds with the Services Agreement ICCS signed. [R. 005; 016-017]. Indeed, as one might expect in an agreement to outsource billing and collection functions, ICCS agreed to the establishment of a "Central Client Account" or "lock box" in its name. [Id.]. ICCS even admits in its Complaint that "[p]ursuant to the Overall Agreement, and as a part thereof, a secure "lock box account" was to have been established in the name of Plaintiff ICCS with Defendant First National Bank of Ames." [R. 007-008; Pet. App. 15a-16a]. Inasmuch as this view of the facts was contrary to the contract signed by ICCS, and contrary to the pleadings filed by ICCS, the Georgia courts properly rejected this claim as well. [Id.].

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[1] "In support of its motion to dismiss, [First National] presented the affidavits of its president showing that the bank's relationship with A.C. Financial was nothing more than that of bank and customer and that A.C. Financial was not its agent. ICCS has not presented any evidence to rebut these sworn statements. The bank's affidavits denying an agency relationship cannot be overcome by the bare conclusory allegation made by ICCS." [Pet. App. 18a-19a].

Finally, ICCS argues that First National took a present assignment in the Lease rather than merely taking a security interest in the Lease. As with the other misconstructions of the facts by ICCS, this argument was also rejected by the Georgia courts. [Pet. App. 15a]. The Georgia courts recognized that by merely filing a financing statement in Georgia to perfect its security interest in the Lease, First National did not establish minimum contacts for the claims regarding the Iowa bank accounts brought by ICCS. [Pet. App. 19a].

The fundamental problem with ICCS's entire analysis of the contacts between First National and the Lease, regardless of how one characterizes First National's interest in it, is that the Lease contains a choice of forum clause making Story County, Iowa the proper forum for any dispute. [R. 005; 018-024]. ICCS ignores the fact that such choice of forum clauses are routinely enforced despite the existence of an allegation of fraud in the inducement. *See, e.g., Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 at n. 14 (1974) (rejecting the notion that "any time a dispute arising out of a transaction is based upon an allegation of fraud ... the [forum-selection] clause is unenforceable," and holding that rather, a "forum-selection clause in a contract is not enforceable if the inclusion of that clause in the contract was the product of fraud or coercion"); *Republic Credit Corp. I v. Rance*, 172 F. Supp. 2d 1178, 1183 (S.D. Iowa 2001) (same).

Thus, as the Georgia appellate courts correctly noted, the contacts First National had with the State of Georgia consisted of "telephonic and written communication with ICCS with regard to the Iowa bank accounts." [Pet. App. 4a-5a, 12a; 16a]. It is on the basis of these contacts that the Georgia Court of Appeals found personal jurisdiction to exist over First National, even though the claims at issue do not

arise from these isolated contacts with the forum. [Pet. App. 5a].

II. WHETHER FIRST NATIONAL'S LIMITED CONTACTS WITH THE STATE OF GEORGIA ARE SUFFICIENT TO ESTABLISH PERSONAL JURISDICTION HINGES ON THE PROPER INTERPRETATION OF THE "ARISE OUT OF OR RELATE TO" PRONG OF THE SPECIFIC JURISDICTION ANALYSIS.

This Court has yet to determine the precise nexus that must exist between a nonresident's contacts with the forum state and a plaintiff's cause of action in order for specific *in personam* jurisdiction to exist. To date, this Court has only stated that a plaintiff's claims must "arise out of or relate to" those contacts. *Helicopteros Nacionales De Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n. 8 (1984).

In this case, the Georgia Court of Appeals has taken a highly expansive view of the phrase "arise out of or relate to." It is an interpretation so expansive that it essentially strips away the due process protections traditionally enjoyed by litigants since *International Shoe, Co. v. Washington*, 326 U.S. 310 (1945). The Georgia court's decision, however, is only symptomatic of the lack of guidance courts have received on how to interpret the phrase. In the absence of such guidance, a wide assortment of differing tests and analyses have emerged over the last 20 years to supply courts with a framework for deciding jurisdictional issues. This precise issue has previously escaped resolution by this Court on two previous occasions in *Helicopteros* and *Carnival Cruise Line v. Shute*, 499 U.S. 585 (1991). Perhaps, the third time is the charm. The present case certainly represents an excellent opportunity to resolve one of the last great disputes over the constitutional limits of *in personam* jurisdiction.

CONCLUSION

For the reasons set forth above, and in the petition, First National respectfully requests that the Court accept its Petition for a Writ of Certiorari.

Respectfully submitted,

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